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Legal protection for victims of defamation in the digital era: Study based on Law No. 11 of 2008 concerning ITE and its changes

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Abstract---The advancement of information globalization has positive and negative impacts, including increasing cybercrimes such as identity theft and defamation. To protect individual rights, Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE) plays an important role in handling defamation in digital media. The ITE Law has been updated through Law Number 19 of 2016 and Law Number 1 of 2024 to adapt to technological developments. This journal discusses legal protection for victims of defamation based on the ITE Law and its amendments, as well as the mechanism for handling cases in the digital era. The approach used in this study is a normative or doctrinal approach, which focuses on binding rules, especially related to regulations regarding defamation whose enforcement can be carried out by state officials (normative approach). The results of this study are that the ITE Law regulates defamation in the digital era, protecting the honor of individuals by establishing elements that must be met for law enforcement. Legal protection for victims of defamation must be balanced with efforts to maintain freedom of expression, so that the implementation of the ITE Law can be fair and effective.

Keywords---Law, ITE Law, Defamation

Introduction

The progress of information globalization currently has a very significant impact on human life. This development has made the world borderless, which has also caused profound social changes in society. Although technological advances provide many benefits for welfare and progress, this development also has a negative side with the increase in crimes that use computers and networks as their tools. These crime modes include auction fraud, online gambling, identity theft, child pornography, acts of terrorism, theft of intellectual property rights, and various other crimes that are detrimental both materially and non-materially to users, and can disrupt the order of social and state life.

Cybercrime emerged as a negative impact of technological advances. Various forms and types of crimes that occur have serious consequences for legal protection for its users. This protection is important because every human being must be protected based on their dignity and honor as a human being. As a form of state responsibility, the state is obliged to provide legal guarantees and real steps to protect its citizens from all forms of crime, both in the real world and in cyberspace.

As a constitutional state, Indonesia has an obligation to protect all its citizens from all detrimental actions, especially actions that can damage the social and state order, such as cybercrime. This crime, which knows no boundaries of space and time, has experienced rapid development, driven by sophisticated technology that is misused by individuals for personal gain. Developing countries, including Indonesia, face major challenges in combating this computer crime, especially at the police level. In addition to effective legal instruments, skilled human resources and adequate facilities and infrastructure are also needed to handle the misuse of information in the digital world.¹

The rapid development of information and communication technology in the digital era has provided many conveniences in communicating and disseminating information. However, on the other hand, this progress also brings various risks, one of which is the increasing cases of defamation through digital media. The very fast and easily accessible dissemination of information on digital platforms is often used by parties-irresponsible parties to damage the reputation of others. In this context, defamation becomes a serious issue that requires effective legal handling, especially in protecting victims from detrimental actions.²

Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE) was drafted to regulate various legal aspects related to the use of information technology, including provisions regarding defamation in electronic media. The ITE Law is an important instrument in providing legal protection for victims of defamation in the digital realm. However, the ITE Law itself has undergone two changes to better adapt to the dynamics of technological developments and the needs of society.

The first amendment to the ITE Law was made through Law Number 19 of 2016, which clarified several aspects related to the definition and legal limitations

related to defamation, as well as improving provisions regarding sanctions and mechanisms for handling defamation cases. One significant change is the change in the articles governing the complaint offense, which allows victims to more easily report cases that befall them.

The second amendment, through Law Number 1 of 2024, focuses on improving the regulation of defamation in the digital era, along with the increasing development of technology and various social media platforms that are often used as a means of defamation. This revision aims to ensure that the law remains relevant and effective in facing legal challenges in the digital era, by adjusting the applicable legal provisions to be more in line with the needs of society and the dynamic development of information technology.

In this context, legal protection for victims of defamation becomes increasingly important, especially in an era where a person's reputation can be destroyed with just one post on social media. Therefore, a study of legal protection based on Law No. 11 of 2008 concerning ITE and its two amendments is very relevant in understanding how the state provides protection to victims of defamation in the digital era, as well as how victims can obtain justice and restore their good name through existing legal processes.

This journal will discuss in depth the legal protection for victims of defamation based on Law Number 11 of 2008 concerning ITE and its amendments, with a focus on the case handling mechanism and the protection provided by Indonesian law for victims in the digital era.

Method

The approach used in this study is a normative or doctrinal approach, which focuses on binding rules, especially those related to regulations on defamation whose enforcement can be carried out by state officials (normative approach). This type of research is descriptive normative, namely describing the applicable criminal law rules related to defamation, to analyze several judges' decisions related to defamation cases that occur in society, with a focus on the elements of the action and its unlawful nature. The data used in this study is secondary data, consisting of:

- a) Primary Legal Materials, such as the 1945 Constitution, the Criminal Code, and Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.
- b) Secondary Legal Materials, which include references from scientific works, literature books, journals, and information taken from the internet that is relevant to the research topic.

Secondary data collection was conducted through library research by inventorying, identifying, and synchronizing data with positive criminal law regulations in Indonesia that regulate similar matters, namely defamation through social media. In this study, the author uses a qualitative normative analysis method, which aims to explain and interpret data based on laws and

regulations, principles, norms, theories, or doctrines of legal science, especially in the field of criminal law.

Results and Discussion

Legal Aspects and Actions in the ITE Law

Defamation is a form of cybercrime that is growing along with the rapid use of technology. In a legal context, this crime is defined as an act that intentionally attacks a person's honor or reputation through statements or information disseminated in public spaces, either verbally or in writing. This includes acts of insult committed through social media or other digital platforms.⁴

In law enforcement, the elements that must be met so that an action can be categorized as defamation include deliberate intent, carried out without permission or rights, aimed at attacking honor, and disseminated to be known by the public. Based on this, regulations such as those contained in the ITE Law and the Criminal Code function to maintain a balance between freedom of expression and the individual's right to honor.⁵

The impact of defamation is not only material but also non-material, such as damaged reputation, disrupted career, and hampered freedom of expression. Therefore, it is important for the public to understand the limits of expressing opinions in public spaces so as not to violate the rights of others. Freedom of expression and freedom of opinion, as well as the right to obtain information through information and communication technology, are expected to support general welfare, educate the nation, and provide security, justice, and legal certainty for users and organizers of electronic systems (as explained in the 2016 ITE Law). However, amidst this development, new challenges have emerged in the form of information technology-based crimes, such as defamation, fraud, and other cyber crimes.

The use of information technology requires effective legal protection to overcome potential criminal acts that can occur, either through verbal, visual, or physical actions. Although laws such as the 2008 ITE Law have regulated criminal provisions related to cybercrime, the changes made in the 2016 ITE Law, including revisions to articles such as Article 45 which regulates insults or defamation, aim to strengthen legal protection for technology users.⁶

One of the significant changes in the 2016 ITE Law is the reduction of the threat of imprisonment from a maximum of 6 years to 4 years, as well as a reduction in the fine from 1 billion rupiah to 750 million rupiah. With this change, perpetrators of criminal defamation cannot be detained during the investigation, prosecution, or trial process.

In Indonesia, defamation is considered a violation of the norms of decency that are highly respected in Eastern culture. Insults that attack a person's honor, either directly or through social media, are included in the category of serious legal violations. This reflects the importance of protecting individuals and institutions from attacks that can damage their reputation.⁷

The rapid development of digital technology has had a major impact on the social and economic life of society. In the legal context, information technology requires regulations that are able to guarantee individual rights and protect society from crimes committed in cyberspace. The ITE Law is here as an answer to this need, providing relevant regulations in the digital era. However, like many other laws, its implementation and application require continuous evaluation to ensure that the rules are not only fair but also not misused.

The multi-interpretable articles in the Electronic Information and Transactions Law (UU ITE) reflect significant legal challenges in Indonesia, especially in the rapidly developing digital era. The ambiguity in the formulation of these articles often results in ambiguity, which can be exploited by certain parties to avoid responsibility or, conversely, to carry out unfair prosecutions. For example, in the context of defamation, definitions that are too broad or unclear can lead to differences of interpretation between lawyers, judges, and the public. This has the potential to create legal uncertainty for individuals and entities operating in the digital realm.

Clarity in legal interpretation becomes even more important when information can spread very quickly through social media and other digital platforms. Thus, any action that has the potential to harm others, such as defamation, must be handled carefully to prevent abuse. On the one hand, the law must protect individuals from harmful actions; on the other hand, the law must not restrict freedom of expression. Therefore, precise and clear legal formulation is essential to achieve a balance between the protection of individual rights and freedom of speech.

In facing these challenges, collaborative efforts are needed between lawmakers, academics, and legal practitioners to improve and refine the ITE Law. Constructive dialogue can help identify problematic areas and develop comprehensive solutions. In addition, public education about their rights and the legal consequences of actions in cyberspace is also important so that the public can actively participate in maintaining justice and order. With these steps, it is hoped that a more transparent and fair legal system can be created in the digital era, which is able to protect all parties from the risks and negative impacts that may arise due to legal ambiguity.

Therefore, steps such as revising the law, socializing it to the public, and enforcing fair law must be the government's priority. Thus, the ITE Law can remain relevant and effective in protecting society in the digital era, without sacrificing human rights or freedom of expression guaranteed by the constitution⁸.

One of the important points of the Electronic Information and Transactions Law (UU ITE) is the role of the government in supporting the development of information technology through appropriate regulations. The goal is to create a safe environment for the public when using information technology, prevent misuse, and consider aspects of religion, social values, and Indonesian culture. If implemented properly, the ITE Law can provide significant benefits, including guaranteeing legal certainty in electronic transactions, encouraging national

economic growth, protecting the public from cybercrime, and preventing criminal acts via the internet.

However, despite its many positive impacts, the ITE Law also has several negative impacts. One of the main problems is the multiple interpretations of several articles, especially Articles 27, 28, and 29, which are often debated due to unclear language. As a result, these articles are often used as a tool to limit freedom of speech, inhibit criticism, and create space for abuse of power by law enforcement officers. In fact, these articles are sometimes used as a tool for revenge in political or social competition. Data from the Supreme Court shows that most of the cases handled are related to insults and defamation based on Article 27 paragraph (3), as well as hate speech based on Article 28 paragraph (2)⁹.

The phenomenon of subjective and inconsistent interpretation of articles in the ITE Law raises serious concerns, especially regarding freedom of expression in Indonesia. In the digital era, where information can be easily disseminated and accessed by many people, ambiguity in legal interpretation can be a tool to curb critical voices and limit individuals' freedom to express their opinions. The legal uncertainty resulting from these varying interpretations creates unrest in society, where individuals feel threatened by the possibility of legal action being taken against them simply because of the statements or content they disseminate.

The overlap between the ITE Law and the Criminal Code (KUHP) further exacerbates this situation, especially in terms of insults and defamation. Article 27 paragraph (3) of the ITE Law, which regulates defamation, has similar substance to Articles 310 and 311 of the Criminal Code, which also regulate insults. The differences in regulations and sanctions between these two laws make law enforcement increasingly complex, where law enforcers must decide which law to apply in a particular case. This situation can potentially lead to injustice, where individuals or entities could be prosecuted under two different regulations for the same act, resulting in legal confusion and uncertainty.

To address this issue, it is important for lawmakers to evaluate and harmonize the ITE Law and the Criminal Code. This effort can create a clearer and more consistent legal framework, which can provide legal certainty for the community. In addition, a more open dialogue between the government, academics, and civil society is also needed to ensure that freedom of expression is maintained without sacrificing protection against detrimental actions. With these steps, it is hoped that a healthier and fairer legal atmosphere can be created, which is able to support the development of a democratic and transparent society.¹⁰

The following are articles that regulate defamation, including:

ITE Law No. 11 of 2008

Article 27

1. Any person who intentionally and without authority distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain content that violates morality.
2. Any person who intentionally and without authority distributes

and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing gambling content.

3. Any person who intentionally and without authority distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insulting and/or defamatory content.
4. Any person who intentionally and without authority distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain blackmail and/or threats.

Article 28

1. Any person who intentionally and without right spreads false and misleading news that results in consumer losses in Electronic Transactions.
2. Any person who intentionally and without right disseminates information intended to cause hatred or hostility towards individuals and/or certain community groups based on ethnicity, religion, race and inter-group (SARA).

Article 36

Any person who intentionally and without rights or against the law carries out acts as referred to in Articles 27 to 34 which result in loss to another person.

Article 51

Any person who fulfills the elements as referred to in Article 36 shall be punished with a maximum imprisonment of 12 years and/or a maximum fine of IDR 12,000,000,000.00 (twelve billion rupiah).

Article 45

1. Any person who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).
2. Any person who fulfills the elements as referred to in Article 28 paragraph (1) or paragraph (2) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

In addition to the ITE Law No. 11 of 2008, the Criminal Code also contains articles that regulate defamation. The following are the articles.

Article 310

1. Anyone who intentionally attacks the honor or good name of a person by accusing them of something, with the clear intention of making it known to the public, is threatened with defamation with a maximum prison sentence of nine months or a maximum fine of four thousand five hundred rupiah.
2. If this is done in writing or images that are broadcast, shown or posted in public, then the perpetrator is subject to written defamation with a maximum prison sentence of one year and four months or a maximum fine of four thousand five hundred rupiah.

3. It does not constitute defamation or written defamation if the act is clearly carried out in the public interest or because of necessity to defend oneself.

Cyber law is a legal aspect whose scope includes individuals or legal subjects who use and utilize internet technology, which comes into effect when someone enters cyberspace. The scope of cyber law includes several areas such as copyright, trademark rights, defamation, slander, insults, electronic transactions, internet resource management, personal security, prudence, IT crimes, evidence, investigation, theft via the internet, consumer protection, and the use of the internet in everyday life.

Cyber law is also closely related to efforts to prevent and handle criminal acts, and is the legal basis for law enforcement against electronic crimes. This includes money laundering and terrorism. In order to prevent increasing crimes and violations of the law in the use of technology, several laws have been drafted to regulate Information Technology, including:

1. Copyright Law no. 19 of 2002 concerning Copyright.
2. Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE)

The ITE Law regulates various activities in cyberspace or digital in Indonesia, including:

1. Electronic Data Protection
The ITE Law provides protection for electronic data and personal information stored, processed, or transmitted through electronic systems. This law regulates the use of personal data, including the collection, processing, and disclosure of information, and provides rights to individuals regarding their data.
2. Computer Crime
The ITE Law also regulates illegal acts such as unauthorized access to computer systems, the spread of computer viruses, cyber attacks, and sabotage of computer systems. In addition, crimes such as identity theft, data theft, online fraud, and the spread of illegal content are also regulated in this law.
3. Freedom of Expression
The ITE Law covers aspects of freedom of expression and the dissemination of information in cyberspace. However, this law sets limits related to insults, defamation, hate speech, and the dissemination of content that disturbs public order or violates the law.
4. Electronic Transaction Regulation
The ITE Law regulates the use of electronic transactions, including electronic signatures, electronic commerce, and the use of electronic documents as legal evidence.
5. Law Enforcement and Sanctions
The ITE Law provides a framework for law enforcement related to cyber offenses, including procedures for investigation, prosecution, and trial.

Criminal and civil sanctions are also provided for offenses involving computer systems, electronic data, or electronic transactions.

ITE Law and its interpretation continues to develop and may change over time. Therefore, referring to applicable laws and obtaining competent legal advice is very important in interpreting and complying with the ITE Law."

Legal Protection for Victims of Defamation in the Digital Era

In the digital age, defamation can happen very quickly through various online platforms, such as social media, blogs, and discussion forums. The Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE) and its amendments provide an important legal framework in protecting individuals from defamation in cyberspace. The articles in the ITE Law explicitly regulate actions that are considered defamation, thus providing a legal basis for victims to seek justice.

The ITE Law regulates the prohibition of disseminating information that is detrimental, including insults and defamation. In Article 27 paragraph (3), there is a provision stating that anyone who intentionally and without the right distributes electronic information containing insulting content can be subject to sanctions. This shows that the ITE Law not only regulates actions carried out in the real world, but also confirms that acts of defamation that occur in cyberspace can be subject to legal sanctions.¹².

Legal protection for victims of defamation is also strengthened by the law enforcement mechanism contained in the ITE Law. Victims have the right to report acts of defamation to the authorities, such as the police, for further investigation. In addition, the ITE Law also regulates the legal procedures that can be taken by victims, including criminal and civil prosecution. This provides access for victims to obtain compensation for losses suffered due to defamation. Although the ITE Law provides protection for victims, there are challenges in its implementation. One of the main challenges is the potential for misuse of the articles in the ITE Law which can lead to restrictions on freedom of expression. Some parties are concerned that the existing articles can be used to suppress legitimate criticism or opinions against certain individuals or groups. Therefore, a balance is needed between protecting individual rights and freedom of expression so that unfair law enforcement does not occur.

Law No. 11 of 2008 concerning ITE and its amendments provide significant legal protection for victims of defamation in the digital era. However, the challenges in its implementation require more attention from all parties, including legislators, law enforcers, and the public, to ensure that the law. This law is implemented fairly and effectively, without sacrificing freedom of expression which is a basic right of every individual.¹³.

Conclusion

Defamation as a crimeCyber in the digital era is regulated in the ITE Law, which aims to protect the honor of individuals. Law enforcement requires the fulfillment of certain elements, and the impact of defamation is both material and non-

material. The ITE Law provides a legal framework to address cybercrime and protect freedom of expression, but challenges such as multi-interpretable articles can lead to abuse. Legal protection efforts for victims of defamation through the ITE Law are important, but balance is needed so that freedom of expression is maintained. Fair and effective implementation of this law is key to achieving justice and protecting individual rights.

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